

corporation (or any person acting in concert with such corporation) to directly or indirectly acquire stock of such corporation from any shareholder if—

(1) such shareholder held such stock (as determined under section 1223) for less than 2 years before entering into the agreement to make the transfer,

(2) at some time during the 2-year period ending on the date of such acquisition—

(A) such shareholder,

(B) any person acting in concert with such shareholder, or

(C) any person who is related to such shareholder or person described in subparagraph (B),

made or threatened to make a public tender offer for stock of such corporation, and

(3) such acquisition is pursuant to an offer which was not made on the same terms to all shareholders.

For purposes of the preceding sentence, payments made in connection with, or in transactions related to, an acquisition shall be treated as paid in such acquisition.

(c) Other definitions

For purposes of this section—

(1) Public tender offer

The term “public tender offer” means any offer to purchase or otherwise acquire stock or assets in a corporation if such offer was or would be required to be filed or registered with any Federal or State agency regulating securities.

(2) Related person

A person is related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b).

(d) Tax applies whether or not amount recognized

The tax imposed by this section shall apply whether or not the gain or other income referred to in subsection (a) is recognized.

(e) Administrative provisions

For purposes of the deficiency procedures of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(Added Pub. L. 100-203, title X, §10228(a), Dec. 22, 1987, 101 Stat. 1330-417; amended Pub. L. 100-647, title II, §2004(o)(1)(A), (B)(i), (C), (2), Nov. 10, 1988, 102 Stat. 3608.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-647, §2004(o)(1)(A), substituted “gain or other income of such person by reason of such receipt” for “gain realized by such person on such receipt”.

Subsec. (b). Pub. L. 100-647, §2004(o)(1)(B)(i), substituted “a corporation (or any person acting in concert with such corporation) to directly or indirectly acquire stock of such corporation” for “a corporation to directly or indirectly acquire its stock”.

Subsec. (d). Pub. L. 100-647, §2004(o)(1)(C), substituted “amount” for “gain” in heading and inserted “or other income” after “the gain” in text.

Subsec. (e). Pub. L. 100-647, §2004(o)(2), added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 2004(o)(1)(A), (C), (2) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

Section 2004(o)(1)(B)(ii) of Pub. L. 100-647 provided that: “The amendment made by clause (i) [amending this section] shall apply to transactions occurring on or after March 31, 1988.”

EFFECTIVE DATE

Section 10228(d) of Pub. L. 100-203 provided that: “The amendments made by this section [enacting this chapter and amending section 275 of this title] shall apply to consideration received after the date of the enactment of this Act [Dec. 22, 1987] in taxable years ending after such date; except that such amendments shall not apply in the case of any acquisition pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition.”

Subtitle F—Procedure and Administration

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AMENDMENTS

1980—Pub. L. 96-589, §6(g)(3)(E), Dec. 24, 1980, 94 Stat. 3410, substituted “Jeopardy, receiverships, etc.” for “Jeopardy, bankruptcy and receiverships” in item for chapter 70.

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 167, 408, 460, 468A, 468B, 643, 810, 852, 860E, 860F, 860K, 874, 882, 911, 1397E, 2661, 3121, 3402, 3405, 3406, 3510, 4405, 4414, 4462, 4484, 4980, 4999, 5067, 5148, 5560, 5881, 7851 of this title; title 42 sections 401, 408, 1307, 1395i; title 48 section 1421i.

CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

Part	
I.	Records, statements, and special returns.
II.	Tax returns or statements.
III.	Information returns.
IV.	Signing and verifying of returns and other documents.

¹ Section numbers editorially supplied.